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BY ECF

Hon. Katherine B. Forrest
United States District Court
Southern District of New York
500 Pearl Street, Room 1950
New York, NY 10007

Re: Flushing Bank v. Green Dot Corp. & Green Dot Bank, No. 13-cv-9120 (KBF) (AJP)

Dear Judge Forrest:

We represent Defendants and Counterclaimants (collectively, "Green Dot") in the above-referenced matter, and write in response to Plaintiff and Counterdefendant Flushing Bank's letter that it sent to Your Honor earlier today. In its letter, Flushing Bank sought leave to serve a rebuttal expert report that "will focus only on the survey and Report proffered by Mr. Poret [Green Dot's expert]; it will not address the merits of Plaintiff's trademark infringement case."

As a preliminary matter, please note that Flushing Bank did not raise this issue with Green Dot after receiving the Poret report and before sending its letter to Your Honor. If Flushing Bank had raised the issue, we would have told Flushing Bank what we tell Your Honor now, namely, that Green Dot does not object to Flushing Bank serving a rebuttal expert report limited to the discrete topic that Flushing Bank included in its letter, as quoted above (to be clear, Flushing Bank also wrote that its expert will "testify solely as to the survey conducted by Defendants' expert," and that "Plaintiff understands that its expert will not opine on the likelihood of confusion between the 'GoBank' trademark and the 'iGoBanking' trademark, as Plaintiff has the burden of proof on this issue and any expert report would have necessarily been submitted on or before June 20, 2014").

However, Green Dot notes that Flushing Bank's letter is silent regarding a proposed deadline for its rebuttal report, and keeping in mind the parties' September 8, 2014 deadline for summary judgment motions, Green Dot proposes that Flushing Bank serve its rebuttal report no later than Friday, August 15, 2014. That is three weeks after Flushing Bank received the Poret report, and roughly three weeks before the summary judgment deadline. Although Flushing Bank notes in its letter that "[o]ur point of contact at Flushing Bank was out of the country last week," Green Dot respectfully submits that this fact does not warrant providing Flushing Bank with more time to serve its rebuttal report. Green Dot told Flushing Bank well before July 25 that it



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was considering serving a survey report, and as Flushing Bank notes in its letter, this issue was discussed at length during the June 25 status conference. During that month after the status conference and before receipt of the Poret report, Flushing Bank had sufficient time to interview prospective experts and determine whether it would in fact retain a rebuttal expert if circumstances warranted, so that Flushing Bank could hit the ground running immediately after July 25. Flushing Bank apparently chose not to do so. In short, it is not credible that Flushing Bank could not strategize over this issue until it received the Poret report, and Green Dot respectfully submits that it should not be prejudiced by Flushing Bank being permitted to serve its rebuttal report even closer to the September 8 summary judgment deadline, or by a delay in the summary judgment and/or trial calendars.

Green Dot thanks Your Honor for your time and consideration.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Adam Siegartel".

Adam Siegartel

cc: Counsel for Flushing Bank (via ECF)